

AMENDED IN SENATE JUNE 30, 2009

AMENDED IN ASSEMBLY APRIL 30, 2009

AMENDED IN ASSEMBLY MARCH 12, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 590

Introduced by Assembly Member Feuer

February 25, 2009

An act to add Article 9.6 (commencing with Section 6159.5) to Chapter 4 of Division 3 of the Business and Professions Code, ~~and to amend Sections 68085.1 and 70626 of, and to add Chapter 2.1 (commencing with Section 68650) to Title 8 of, the Government Code,~~ relating to the practice of law.

LEGISLATIVE COUNSEL'S DIGEST

AB 590, as amended, Feuer. Legal aid.

~~(1) Existing~~

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law provides that it is the duty of an attorney to, among other things, never reject, for any consideration personal to himself or herself, the cause of the defenseless or oppressed. Existing law provides that a lawyer may fulfill his or her ethical commitment to provide pro bono services, in part, by providing financial support to organizations providing free legal services to persons of limited means.

This bill would state the intent of the Legislature to encourage the legal profession to make further efforts to meet its professional responsibilities and other obligations by providing pro bono legal

services and financial support of nonprofit legal organizations that provide free legal services to underserved communities.

This bill would prohibit a person or organization that is not a specified type of legal aid organization, as defined, from using the term “legal aid,” or any confusingly similar name in any firm name, trade name, fictitious business name, or other designation, or on any advertisement, letterhead, business card, or sign. The bill additionally would prohibit any person from charging a fee for any legal form or other document created by a legal aid organization, a court, or other public agency that is available to the public without charge, or from charging a fee to assist in the provision of self-help services that are provided without charge by a court or legal aid organization. The bill would subject a person or organization that violates these prohibitions to specified civil liability.

~~This bill would, subject to funding specifically provided for this purpose, require the Judicial Council to develop one or more model pilot projects in selected courts for 3-year periods pursuant to a competitive grant process and a request for proposals. The bill would provide that legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs in those courts selected by the Judicial Council, as specified. The bill would provide that each project shall be a partnership between the court, a qualified legal services project that shall serve as the lead agency for case assessment and direction, and other legal services providers in the community who are able to provide the services for the project. The bill would require the lead legal services agency, to the extent practical, to identify and make use of pro bono services in order to maximize available services efficiently and economically. The bill would provide that the court partner is responsible for providing procedures, personnel, training, and case management and administration practices that reflect best practices, as specified. The bill would require a local advisory committee to be formed to facilitate the administration of the local project and to ensure that the project is fulfilling its objectives. The bill would require the Judicial Council to conduct a study to demonstrate the effectiveness and continued need for the pilot program, and to report its findings and recommendations to the Governor and the Legislature on or before March 1, 2013, and every 3 years thereafter.~~

~~(2) Existing law sets the fees at \$15 or \$20 for various court services, including, but not limited to, issuing a writ for the enforcement of an order or judgment, issuing an abstract of judgment, recording or~~

registering any license or certificate, issuing an order of sale, and filing and entering an award under the Workers' Compensation Law.

~~This bill would increase those fees by \$10, and would provide that the \$10 fee increase shall be transmitted quarterly for deposit in the Trial Court Trust Fund and used by the Judicial Council for implementing and administering the civil representation pilot program described in (1) above.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature hereby finds and declares all of~~
2 ~~the following:~~

3 ~~(a) There is an increasingly dire need for legal services for poor~~
4 ~~Californians. Due to insufficient funding from all sources, existing~~
5 ~~programs providing free services in civil matters to indigent and~~
6 ~~disadvantaged persons, especially underserved groups such as~~
7 ~~elderly, disabled, children, and non-English-speaking persons, are~~
8 ~~not adequate to meet existing needs.~~

9 ~~(b) The critical need for legal representation in civil cases has~~
10 ~~been documented repeatedly, and the statistics are staggering.~~
11 ~~California courts are facing an ever increasing number of parties~~
12 ~~who go to court without legal counsel. Over 4.3 million~~
13 ~~Californians are believed to be currently unrepresented in civil~~
14 ~~court proceedings, largely because they cannot afford~~
15 ~~representation. Current funding allows legal services programs to~~
16 ~~assist less than one-third of California's poor and lower income~~
17 ~~residents. As a result, many Californians are unable to meaningfully~~
18 ~~access the courts and obtain justice in a timely and effective~~
19 ~~manner. The effect is that critical legal decisions are made without~~
20 ~~the court having the necessary information, or without the parties~~
21 ~~having an adequate understanding of the orders to which they are~~
22 ~~subject.~~

23 ~~(c) The modern movement to offer legal services for the poor~~
24 ~~was spearheaded by Sargent Shriver in 1966, aided by the~~
25 ~~American Bar Association, then headed by future Supreme Court~~
26 ~~Justice Lewis Powell, driven by the large disparity that existed~~
27 ~~between the number of lawyers available for poor Americans~~
28 ~~compared with the availability of legal services for others. While~~

1 much progress has been made since then, significant disparity
2 continues. According to federal poverty data, there was one legal
3 aid attorney in 2006 for every 8,373 poor people in California. By
4 contrast, the number of attorneys providing legal services to the
5 general population is approximately one for every 240 people –
6 nearly 35 times higher.

7 (d) The fair resolution of conflicts through the legal system
8 offers financial and economic benefits by reducing the need for
9 many state services and allowing people to help themselves. There
10 are significant social and governmental fiscal costs of depriving
11 unrepresented parties of vital legal rights affecting basic human
12 needs, particularly with respect to indigent parties, including the
13 elderly and people with disabilities, and these costs may be avoided
14 or reduced by providing the assistance of counsel where parties
15 have a reasonable possibility of achieving a favorable outcome.

16 (e) Expanding representation will not only improve access to
17 the courts and the quality of justice obtained by these individuals,
18 but will allow court calendars that currently include many
19 self-represented litigants to be handled more effectively and
20 efficiently. Increasing the availability of legal representation for
21 litigants who must currently represent themselves or face loss of
22 their legal rights is a key priority of the Judicial Council and Chief
23 Justice Ronald M. George. As the Chief Justice has noted, the large
24 and growing number of self-represented litigants is one of the most
25 challenging issues in the coming decade, imposing significant
26 costs on the judicial system and the public by impairing the ability
27 of the courts to efficiently process heavy caseloads, and eroding
28 the public's confidence in our judicial system. While court self-help
29 services are important, those services are insufficient alone to meet
30 all needs. Experience has shown that those services are much less
31 effective when, among other factors, unrepresented parties lack
32 income, education, and other skills needed to navigate a complex
33 and unfamiliar court process, and particularly when unrepresented
34 parties are required to appear in court or face opposing counsel.
35 Recognizing that not all indigent parties may be allowed
36 representation, even when they have meritorious cases, and that
37 self-help services cannot meet the needs of all unrepresented
38 parties, courts presented with disputes regarding basic human needs
39 that involve low-income litigants facing parties who are represented
40 by counsel have a special responsibility to employ best practices

1 designed to ensure that unrepresented parties obtain meaningful
2 access to justice and to guard against the involuntary waiver or
3 other loss of rights or the disposition of those cases without
4 appropriate information and regard for potential claims and
5 defenses, consistent with principles of judicial neutrality. The
6 experience and data collected through a pilot program will assist
7 the courts and the legal community in developing new strategies
8 to provide legal representation to overcome this challenge.

9 (f) The doctrine of equal justice under the law is based on two
10 principles. One is that the substantive protections and obligations
11 of the law shall be applied equally to everyone, no matter how
12 high or low their station in life. The second principle involves
13 access to the legal system. Even if we have fair laws and an
14 unbiased judiciary to apply them, true equality before the law will
15 be thwarted if people cannot invoke the laws for their protection.
16 For persons without access, our system provides no justice at all,
17 a situation that may be far worse than one in which the laws
18 expressly favor some and disfavor others.

19 (g) Many judicial leaders acknowledge that the disparity in
20 outcomes is so great that indigent parties who lack representation
21 regularly lose cases that they would win if they had counsel. A
22 growing body of empirical research confirms the widespread
23 perception that parties who attempt to represent themselves are
24 likely to lose, regardless of the merits of their case, particularly
25 when the opposing party has a lawyer, while parties represented
26 by counsel are far more likely to prevail. Judicial leaders and
27 scholars also believe that the presence of counsel encourages
28 settlements. Just as importantly, court opinion surveys show that
29 more than two-thirds of Californians believe low-income people
30 usually receive worse outcomes in court than others. Unfairness
31 in court procedures and outcomes, whether real or perceived,
32 threatens to undermine public trust and confidence in the courts.
33 The sense that court decisions are made through a process that is
34 fair and just, both in substance and procedure, strongly affects
35 public approval and confidence in California courts. As many legal
36 and judicial leaders have noted, the combined effect of widespread
37 financial inability to afford representation coupled with the severe
38 disadvantages of appearing in court without an attorney foster a
39 destructive perception that money drives the judicial system.
40 Respect for the law and the legal system is not encouraged if the

1 public perceives, rightly or wrongly, that justice is mainly for the
2 wealthy.

3 (h) ~~Equal access to justice without regard to income is a~~
4 ~~fundamental right in a democratic society. It is essential to the~~
5 ~~enforcement of all other rights and responsibilities in any society~~
6 ~~governed by the rule of law. It also is essential to the public's~~
7 ~~confidence in the legal system and its ability to reach just decisions.~~

8 (i) ~~The adversarial system of justice relied upon in the United~~
9 ~~States inevitably allocates to the parties the primary responsibility~~
10 ~~for discovering the relevant evidence, finding the relevant legal~~
11 ~~principles, and presenting them to a neutral judge or jury.~~
12 ~~Discharging these responsibilities generally requires the knowledge~~
13 ~~and skills of a legally trained professional. The absence of~~
14 ~~representation not only disadvantages parties, it has a negative~~
15 ~~effect on the functioning of the judicial system. When parties lack~~
16 ~~legal counsel, courts must cope with the need to provide guidance~~
17 ~~and assistance to ensure that the matter is properly administered~~
18 ~~and the parties receive a fair trial or hearing. Those efforts,~~
19 ~~however, deplete scarce court resources and negatively affect the~~
20 ~~court's ability to function as intended, including causing erroneous~~
21 ~~and incomplete pleadings, inaccurate information, unproductive~~
22 ~~court appearances, improper defaults, unnecessary continuances,~~
23 ~~delays in proceedings for all court users, and other problems that~~
24 ~~can ultimately subvert the administration of justice.~~

25 (j) ~~Because in many civil cases lawyers are as essential as judges~~
26 ~~and courts to the proper functioning of the justice system, the state~~
27 ~~has just as great a responsibility to ensure adequate counsel is~~
28 ~~available to both parties in those cases as it does to supply judges,~~
29 ~~courthouses, and other forums for the hearing of those cases.~~

30 (k) ~~Many of those living in this state cannot afford to pay for~~
31 ~~the services of lawyers when needed for them to enjoy fair and~~
32 ~~equal access to justice. In some cases, justice is not achievable if~~
33 ~~one side is unrepresented because the parties cannot afford the~~
34 ~~cost of representation. The guarantees of due process and equal~~
35 ~~protection as well as the common law that serves as the rule of~~
36 ~~decision in California courts underscore the need to provide legal~~
37 ~~representation in critical civil matters when parties cannot afford~~
38 ~~the cost of retaining a lawyer. In order for those who are unable~~
39 ~~to afford representation to exercise this essential right of~~
40 ~~participants in a democracy, to protect their rights to liberty and~~

1 property, and to the pursuit of basic human needs, the state has a
2 responsibility to provide legal counsel without cost. In many cases
3 decided in the state's adversarial system of civil justice the parties
4 cannot gain fair and equal access to justice unless they are advised
5 and represented by lawyers. In other cases, there are some forums
6 in which it may be possible for most parties to have fair and equal
7 access if they have the benefit of representation by qualified
8 nonlawyer advocates, and other forums where parties can represent
9 themselves if they receive self-help assistance.

10 (l) The state has an interest in providing publicly funded legal
11 representation and nonlawyer advocates or self-help advice and
12 assistance, when the latter is sufficient, and doing so in a
13 cost-effective manner by ensuring the level and type of service
14 provided is the lowest cost type of service consistent with providing
15 fair and equal access to justice. Several factors can affect the
16 determination of when representation by an attorney is needed for
17 fair and equal access to justice and when other forms of assistance
18 will suffice. These factors include the complexity of the substantive
19 law, the complexity of the forum's procedures and process, the
20 individual's education, sophistication and English language ability,
21 and the presence of counsel on the opposing side of the dispute.

22 (m) If those advised, assisted, or represented by publicly funded
23 lawyers are to have fair and equal access to justice, those lawyers
24 must be as independent, ethical, and loyal to their clients as those
25 serving clients who can afford to pay for counsel.

26 (n) The services provided for in this act are not intended to, and
27 shall not, supplant legal services resources from any other source.
28 This act does not entitle any person to receive services from a
29 particular legal services provider, nor shall this act override the
30 local or national priorities of existing legal services programs. The
31 services provided for in this act are likewise not intended to
32 undermine any existing pilot programs or other efforts to simplify
33 court procedures or provide assistance to unrepresented litigants.
34 Furthermore, nothing in this act shall be construed to prohibit the
35 provision of full legal representation or other appropriate services
36 funded by another source.

37 **SEC. 2.**

38 **SECTION 1.** In light of the large and ongoing justice gap
39 between the legal needs of low-income Californians and the legal
40 resources available to meet those needs, it is the intent of the

1 Legislature to encourage the legal profession to make further efforts
2 to meet its professional responsibilities and other obligations by
3 providing pro bono legal services and financial support of nonprofit
4 legal organizations that provide free legal services to underserved
5 communities.

6 ~~SEC. 3.~~

7 *SEC. 2.* Article 9.6 (commencing with Section 6159.5) is added
8 to Chapter 4 of Division 3 of the Business and Professions Code,
9 to read:

10
11 Article 9.6. Legal Aid Organizations
12

13 6159.5. The Legislature hereby finds and declares all of the
14 following:

15 (a) Legal aid programs provide a valuable service to the public
16 by providing free legal services to the poor.

17 (b) Private, for-profit organizations that have no lawyers have
18 been using the name “legal aid” in order to obtain business from
19 people who believe they are obtaining services from a nonprofit
20 legal aid organization.

21 (c) Public opinion research has shown that the term “legal aid”
22 is commonly understood by the public to mean free legal assistance
23 for the poor.

24 (d) Members of the public seeking free legal assistance are often
25 referred by telephone and other directory assistance information
26 providers to for-profit organizations that charge a fee for their
27 services, and there are a large number of listings in many telephone
28 directories for “legal aid” that are not nonprofit but are actually
29 for-profit organizations.

30 (e) The Los Angeles Superior Court has held that there is a
31 common law trademark on the name “legal aid,” which means
32 legal services for the poor provided by a nonprofit organization.

33 (f) The public will be benefited if for-profit organizations are
34 prohibited from using the term “legal aid,” in order to avoid
35 confusion.

36 6159.51. For purposes of this article, “legal aid organization”
37 means a nonprofit organization that provides civil legal services
38 for the poor without charge.

39 6159.52. (a) It is unlawful for any person or organization to
40 use the term “legal aid,” “legal aide,” or any confusingly similar

1 name in any firm name, trade name, fictitious business name, or
2 any other designation, or on any advertisement, letterhead, business
3 card, or sign, unless the person or organization is a legal aid
4 organization subject to fair use principles for nominative,
5 descriptive, or noncommercial use.

6 (b) It is unlawful for any person to sell or charge a fee for any
7 legal form or other document created by a legal aid organization
8 or by a court or other public agency of the state regarding or for
9 use in a court action or proceeding if the form or other document
10 is available to the public without charge from the legal aid
11 organization, court, or other public agency.

12 (c) It is unlawful for any person for a fee to assist or offer to
13 assist in the provision of self-help services that are provided
14 without charge by a court or legal aid organization.

15 6159.53. (a) Any consumer injured by a violation of Section
16 6159.52 may file a complaint and seek injunctive relief, restitution,
17 and damages in the superior court of any county in which the
18 defendant maintains an office, advertises, or is listed in a telephone
19 directory.

20 (b) A person who violates Section 6159.52 shall be subject to
21 an injunction against further violation of Section 6159.52 by any
22 legal aid organization that maintains an office in any county in
23 which the defendant maintains an office, advertises, or is listed in
24 a telephone directory. In an action under this subdivision, it is not
25 necessary to allege or prove actual damage to the plaintiff, and
26 irreparable harm and interim harm to the plaintiff shall be
27 presumed.

28 (c) Reasonable attorney's fees shall be awarded to the prevailing
29 plaintiff in any action under this section.
30

31
32 **All matter omitted in this version of the bill**
33 **appears in the bill as amended in Assembly,**
34 **April 30, 2009. (JR11)**
35